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LOOKSMART LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WEBOOST MEDIA S.R.L., a Societa a
responsabilita limitata,

Plaintiffs,

v.

LOOKSMART LTD., a Delaware corporation,
and DOES 1 through 100,

Defendants.

) Case No.: 3:13-cv-05304 SC

)

) **DEFENDANT'S NOTICE OF MOTION**
) **TO DISMISS OR IN THE ALTERNATIVE**
) **FOR PARTIAL SUMMARY JUDGMENT**

)

) **Hearing Date: February 7, 2014**

) **Location: 450 Golden Gate Avenue, San**
) **Francisco, CA 94102, Courtroom 1, 17th**
) **Floor**

) **Time: 10:00 a.m.**

)

)

NOTICE IS HEREBY GIVEN that on February 7, 2014 at 10:00 a.m. in Courtroom 1,
17th Floor at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant LOOKSMART
LTD ("LookSmart") hereby moves pursuant to Rule 12(b)(6), or in the alternative Rule 56 of the
Federal Rules of Civil Procedure, for an order dismissing certain claims with prejudice made
against LookSmart on the grounds that the contract between the parties, by its terms, limits the
liability of either party.

1 This Motion is made on the following grounds:

2 1. This lawsuit concerns a disagreement concerning a contract between the parties. The
3 contract provides in pertinent part: UNDER NO CIRCUMSTANCES WILL EITHER
4 PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT,
5 TORT OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL,
6 SPECIAL OR EXEMPLARY DAMAGES. *See* Complaint Ex. A, Pg. 2.

7 Furthermore, the contract limits the parties' liability to "THE TOTAL AMOUNT
8 PAID OR PAYABLE . . . TO LOOKSMART UNDER THIS AGREEMENT."
9

10 2. In addition to the cause of action No. One for Breach of Contract, Plaintiff's
11 Complaint alleges additional causes of action against LookSmart for the following:

12 a. Cause of Action Number Two: **Breach of the Covenant of Good Faith and**
13 **Fair Dealing;**

14 b. Cause of Action Number Three: **Fraudulent Concealment;**

15 c. Cause of Action Number Four: **Negligent Interference;**

16 d. Cause of Action Number Five: **Intentional Interference with Prospective**
17 **Economic Advantage;**

18 e. Cause of Action Number Six: **Intentional Interference with Contractual**
19 **Relations;** and

20 f. Cause of Action Number Seven: **Violation of California Business and**
21 **Professions Code § 17200.**
22

23 3. Plaintiff's causes of action Two, Three, Four, Five, Six, and Seven are, pursuant to
24 the contractual provision between the parties precluding liability for "INDIRECT,
25
26
27

INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES”,
are precluded and subject to dismissal.

4. LookSmart further moves for an order limiting the parties’ liability to the total
amount Plaintiff Weboost paid LookSmart under the contract.

RIMAC MARTIN, P.C.

Dated: January 3, 2014

By: /s/ William Reilly
Attorneys for Defendant
LOOKSMART LTD

CERTIFICATE OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 1051 Divisadero Street, San Francisco, California 94115.

On January 3, 2014, the following document is being filed electronically and will be available for viewing and downloading from the Court's CM/ECF system:

DEFENDANT'S NOTICE OF MOTION TO DISMISS OR IN THE ALTERNATIVE FOR PARTIAL SUMMARY JUDGMENT

The Notice of Electronic Case Filing Automatically generated by the system and sent to all parties entitled to service under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court, Northern District of California, who have consented to electronic service shall constitute service of the filed document to all such parties.

Executed on January 3, 2014 at San Francisco, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Grant Ingram
(Type or print name)

/s/ Grant Ingram
(Signature)